

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,)
LLC,)
Plaintiff)
vs.) 16-cv-02477-VC
THE REGENTS OF THE)
UNIVERSITY OF CALIFORNIA, a)
corporation,)
Defendant)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
Videotaped Deposition of Douglas V. Shaw, Ph.D.
San Francisco, California
Thursday, December 8, 2016

Reported by:
JOANNE M. FARRELL, RPR, CRR
CSR Nos. 4838(CA) 506(HI) 507(NM)
Job No. 2492592
Pages 1 - 293

1 true?

2 A. That's correct.

3 Q. It was a successful 30 years, right?

4 MR. LIPPETZ: Objection. Vague.

5 THE WITNESS: In my opinion their program
6 was successful, yes.

7 BY MR. CHIVVIS:

8 Q. But in 1986, around that time, they were --
9 they planned to retire; isn't that right?

10 A. There was a plan for both of them to end
11 their employment within the next few years, correct,
12 yes.

13 Q. And that, in part, was why you were hired,
14 to take over the program from them; is that true?

15 MR. LIPPETZ: Objection. Speculation.
16 Go ahead.

17 THE WITNESS: Part of the responsibility
18 that I was hired to retain was to continue the
19 strawberry research program, which included
20 strawberry breeding at that time, yes.

21 BY MR. CHIVVIS:

22 Q. So one of the reasons you were hired was to
23 oversee the university's strawberry breeding program
24 when Royce Bringhurst and Victor Voth retired,
25 correct?

1 A. That's correct.

2 Q. By 1990 you had assumed direction over the
3 university's strawberry breeding program, true?

4 A. That's correct.

5 Q. And part of your role as the person
6 overseeing the university's strawberry breeding
7 program was to breed new strawberry varieties; is
8 that right?

9 A. That had been a traditional role and, yes,
10 I was acting to breed strawberry cultivars at that
11 point.

12 Q. So as director of the strawberry breeding
13 program at the university, you took it as part of
14 your charge to breed new strawberry varieties?

15 A. It was part of my charge to breed new
16 strawberry cultivars, yes.

17 Q. And moving into that role, you benefited
18 from the strawberry germplasm that Dr. Royce
19 Bringhurst and Victor Voth developed in the years
20 prior, correct?

21 MR. LIPPETZ: Objection. Vague.

22 THE WITNESS: I think you need to define
23 "benefited from" for me.

24 BY MR. CHIVVIS:

25 Q. You used germplasm in your breeding

1 program, as you were running it for the university,
2 that had been developed by doctor Royce Bringhurst
3 and Victor Voth, correct?

4 A. That's correct.

5 Q. You wouldn't have had the program that you
6 have at the university without their work, would
7 you?

8 MR. LIPPETZ: Objection. Speculation.

9 THE WITNESS: I don't really have facts
10 enough to answer that question whether the program
11 would have been adequate, better, worse. I can't
12 answer that.

13 BY MR. CHIVVIS:

14 Q. I'm not asking that question.

15 A. All right.

16 Q. I'm just asking whether you would have had
17 the program you had without their work.

18 A. I think the answer to that is no, I
19 wouldn't.

20 Q. You would not have developed the varieties
21 that you developed without Dr. Bringhurst and Victor
22 Voth's work, would you?

23 MR. LIPPETZ: Objection. Vague.

24 Go ahead.

25 THE WITNESS: That's very vague. I

1 Q. The combined total of the university's
2 checks you've received for the Camarosa patent
3 royalties amounts to more than a million dollars;
4 isn't that right?

5 A. I don't have the figures, but that wouldn't
6 surprise me, no.

7 Q. Wouldn't surprise you?

8 A. Would not surprise me, no.

9 Q. In fact, you received a check last year for
10 your share of Camarosa royalties, right?

11 A. Correct.

12 Q. Royalties from varieties you developed
13 while head of the university strawberry breeding
14 program have made you very wealthy; isn't that true?

15 MR. LIPPETZ: Objection. Vague.

16 THE WITNESS: Define "wealthy" for me.

17 BY MR. CHIVVIS:

18 Q. Do you consider yourself wealthy?

19 A. No.

20 Q. The checks you've received from the
21 university for royalties from the strawberry
22 breeding program have totaled more than \$10 million;
23 isn't that right?

24 A. That's correct.

25 Q. You don't consider that a lot of money?

1 A. Page?

2 Q. On page 11.

3 Do you see the first full paragraph there?

4 A. Yes.

5 Q. It states "Dr. Shaw notified the university
6 of his intent to leave and retire from the
7 university in late 2011"; isn't that right?

8 A. I don't think I have the same document that
9 you have. You said page 11?

10 Q. Yes.

11 A. The first paragraph?

12 Q. The first full paragraph.

13 A. Sorry, sorry.

14 Q. The first full paragraph states --

15 A. Right.

16 Q. -- "Dr. Shaw notified the university of his
17 intent to leave and retire from the university in
18 late 2011"; isn't that right?

19 A. Right. I see that, yes, uh-huh.

20 Q. And that was a truthful and accurate
21 statement when it was made?

22 A. That's correct, yes, uh-huh.

23 Q. So you notified the university of your
24 intent to leave and retire from the university in
25 late 2011; isn't that right?

1 A. That's correct, yes.

2 Q. You did so because you were unhappy; is
3 that fair?

4 MR. LIPPETZ: Objection. Vague.

5 THE WITNESS: I won't say I was unhappy. I
6 would say that we were -- it was time for me to move
7 on and retire and do some other things. Certainly I
8 wasn't satisfied with the situation at the
9 university, but I won't say unhappy, no.

10 BY MR. CHIVVIS:

11 Q. You weren't satisfied with the situation at
12 the university, right?

13 A. I would say that's too simplistic a
14 response. The connection between being unsatisfied
15 with the university was part of the reason. The
16 second reason was it was getting time to retire.

17 Q. And part of the reason was you thought the
18 university strawberry breeding program was not being
19 run like a business, right?

20 MR. LIPPETZ: Objection. Vague.

21 THE WITNESS: Yeah, define what you mean by
22 "run like a business," please.

23 BY MR. CHIVVIS:

24 Q. You thought the program could have made
25 more money?

1 students. Is that the question you're asking?

2 BY MR. CHIVVIS:

3 Q. In 2011 you didn't train any graduate
4 students?

5 A. Oh, that's correct, yes.

6 Q. You thought the university strawberry
7 breeding program could be better run if it was run
8 as a private for-profit commercial enterprise,
9 correct?

10 A. I thought that the time had come to
11 separate the cultivar development part of the plant
12 breeding program to private programs. Not private
13 program but private programs.

14 Q. And that's because you thought that portion
15 of the program could be better run if it was run as
16 a private for-profit commercial enterprise, correct?

17 A. I think private for-profit enterprises
18 would be consistent with a letter that I wrote in
19 2011.

20 Q. Let's use your words. You thought the
21 university's strawberry breeding program could be
22 better run if it was run as private for-profit
23 commercial enterprises?

24 A. I think that's accurate, yes.

25 Q. And you thought that you could do a better

1 program; is that correct?

2 A. That's correct.

3 Q. But you didn't perform any crosses for the
4 university's program in 2014, did you?

5 A. No, we did not.

6 Q. None at all?

7 A. In 2014, no.

8 Q. So that means no new varieties from 2014
9 crosses will be in the program four to seven years
10 from 2014, right?

11 MR. LIPPETZ: Objection. Speculation.

12 THE WITNESS: From the University of
13 California program, if we didn't make crosses there
14 would be no varieties from that particular potential
15 cross year, that's correct.

16 BY MR. CHIVVIS:

17 Q. There's a gap in the pipeline for that
18 year?

19 A. That would be -- I don't know what you mean
20 "a gap in the pipeline," but there will be no
21 crosses in 2014, therefore no possibility for
22 cultivars from that particular cross, potential
23 cross year.

24 Q. The university lost a year?

25 MR. LIPPETZ: Objection. Vague.

1 MR. CHIVVIS: Just to get the record clear
2 I'm going to ask it again and you can object.

3 BY MR. CHIVVIS:

4 Q. There's no germplasm in the university's
5 strawberry breeding program tracing its lineage back
6 to 2013 or 2014, correct?

7 A. I want to avoid the term "germplasm"
8 because I'm not entirely sure what that could
9 entail. It's too vague. But I think what you're
10 trying to get at, there are no selections in the
11 university collection that trace the seedlings that
12 were generated from crosses conducted in 2013 or
13 2014.

14 Q. I'll use your words.

15 A. Okay.

16 Q. There are no selections in the university's
17 strawberry breeding program that trace their lineage
18 back to crosses that were conducted in 2013 or 2014,
19 correct?

20 A. That's correct.

21 Q. And in four to seven years from 2013 or
22 2014, there will be no varieties to release as
23 finished varieties from the university program that
24 trace their lineage back to crosses conducted in
25 2013 or 2014, correct?

1 A. I think that follows, yes.

2 Q. The university has plots near Davis at a
3 place called Wolfskill Experimental Orchard, right?

4 A. That's correct, yes.

5 Q. Test fields?

6 A. Test fields.

7 Q. Your practice when you ran the university's
8 strawberry breeding program was to keep a foundation
9 stock of the university's germplasm at the test
10 fields at Wolfskill Experimental Orchard, right?

11 A. I think we called it a nursery, but yes, I
12 think that's -- is that a term that's familiar to
13 you?

14 Q. Sure.

15 A. Okay.

16 Q. This nursery stock that you kept at
17 Wolfskill Experimental Orchard was basically a copy
18 of everything important in the program, right?

19 MR. LIPPETZ: Objection. Vague.

20 THE WITNESS: It was a copy of most of what
21 existed in the program at any slice of time.

22 BY MR. CHIVVIS:

23 Q. Not everything?

24 A. No, there was a second nursery down in
25 Southern California, and some of the university's

1 strawberry breeding program when California Berry
2 Cultivars was formed, correct?

3 A. That's correct.

4 Q. And California Berry Cultivars' purpose was
5 to form a private strawberry breeding program,
6 right?

7 A. That's correct.

8 Q. And if the university's program were to
9 live on past your tenure at the university,
10 California Berry Cultivars' program would be in
11 competition with the university's program, correct?

12 A. If both of them were intended to go
13 forward, there would certainly be a possibility for
14 competition between them.

15 Q. You hoped that the university's program
16 wouldn't go forward and be in competition with CBC's
17 private breeding program, correct?

18 A. I think that's not accurate. I would say I
19 didn't expect it to go forward.

20 Q. You did not expect the university's program
21 to go forward and be in competition with CBC's
22 private breeding program, correct?

23 A. That's correct.

24 Q. Initially you hoped the university would
25 agree to provide CBC with access to the university's

1 strawberry breeding materials, correct?

2 A. We hoped to package and license the
3 material, the genetic material that Kirk and I had
4 developed over our career, for CBC and other
5 potential breeding companies.

6 Q. You hoped that the university would agree
7 to provide CBC with a license to the genetic
8 material that was developed in the university's
9 strawberry breeding program, correct?

10 A. That's correct.

11 Q. But by 2013, you were growing uncertain
12 whether that license would ever be issued by the
13 university to CBC; isn't that right?

14 MR. LIPPETZ: Objection. Vague.

15 THE WITNESS: I don't think it was ever a
16 certainty that that was going to happen from the
17 start, but I think that throughout most of 2013 we
18 were convinced that we would get a license from the
19 university to go forward.

20 BY MR. CHIVVIS:

21 Q. By the end of 2013, however, you were less
22 convinced; isn't that right?

23 A. No, I think it's fair to say that we had
24 not achieved a license by the end of 2013, and we
25 had hoped for one by the end of 2013.

1 Q. So CBC needed a plan B; am I right?

2 MR. LIPPETZ: Objection. Vague.

3 THE WITNESS: For CBC to proceed in the
4 time frame that we had initially planned on, it
5 would need a plan B, correct.

6 BY MR. CHIVVIS:

7 Q. Needed some other source of strawberry
8 germplasm to start the CBC's strawberry breeding
9 program, correct?

10 A. That's correct. Under any circumstances,
11 timewise or not, if the University of California had
12 refused to license its unreleased genetic material,
13 CBC would have needed to find a different source of
14 materials.

15 Q. You were involved in coming up with that
16 plan B, right?

17 A. Yes.

18 Q. In December 2013, you designed a cross plan
19 in consultation with employees of Eurosemillas?

20 A. I think it was in consultation with
21 initially it was a company called International
22 Semillas.

23 Q. International Semillas is an affiliate of
24 Eurosemillas; is that correct?

25 A. I believe that's correct, yes.

1 Q. Is that an accurate statement?

2 A. I think that's accurate. It's been a very
3 successful program.

4 Q. Second sentence.

5 "The program was initiated by Harold Thomas
6 and Earl Goldsmith in 1930, built upon briefly by
7 Richard Baker and then more extensively by Victor
8 Voth and Royce Bringhurst."

9 Is that an accurate statement?

10 A. That's correct.

11 Q. Third sentence.

12 "From the 1950s to the 1980s, the combined
13 research and breeding skills of Bringhurst and Voth
14 led to the a development of varieties that dominated
15 the California and global strawberry industry."

16 Is that an accurate statement?

17 A. That's an accurate statement.

18 Q. "That domination continued from the 1980s
19 to the present with the current generation of
20 breeder scientists, Dr. Douglas Shaw and Kirk
21 Larson."

22 Is that an accurate statement?

23 A. I think it's an accurate statement, sure.

24 Q. Next paragraph.

25 "The retirement of Bringhurst and Voth led

1 people, you consider them carefully before you send
2 them?

3 A. I think I do, yes.

4 Q. And do you try to be truthful and accurate
5 with them when you write them?

6 A. Yes.

7 Q. So if it's an e-mail here and we are
8 looking at later and you wrote it, you consider your
9 statements carefully before you write them and
10 believe they are a truthful and accurate?

11 A. I think they are a truthful and accurate
12 representation of what I was thinking at the time.

13 Q. Fair enough.

14 Now, in this letter to Candy Volker, again,
15 page 3005, Exhibit 105, you wrote in the first --
16 it's the second paragraph, "The University of
17 California has never had a policy of releasing its
18 germplasm for general breeding purposes," correct?

19 MR. LIPPETZ: Objection. Misstates the
20 document.

21 THE WITNESS: That's what the first
22 sentence says, yes.

23 BY MR. CHIVVIS:

24 Q. And you believe that that statement was
25 accurate at the time that you made the statement to

1 Candy Volker in 1999, correct?

2 A. I believe so, yes.

3 Q. Now, in the paragraph beginning with the
4 word "Third," which is actually the fourth
5 paragraph, overlaps 3005 to 3006, do you see that
6 paragraph?

7 A. Yes, I do.

8 Q. Second full sentence you stated "We intend
9 to develop the best strawberry cultivars in the
10 world and ensure that the best cultivars in the
11 world are available to growers without restriction
12 binding fruit sales, contract, or exorbitant royalty
13 or fee structure."

14 Do you see that?

15 A. Yes, I do.

16 Q. That was an accurate statement at the time
17 you made it in 1999, correct?

18 A. Yeah, I believe that was a statement that I
19 would stand by in 1999, definitely.

20 Q. Next sentence, "A one-way transfer of our
21 germplasm to proprietary strawberry breeding
22 companies would jeopardize this goal."

23 Do you see that?

24 A. Yes, I do.

25 Q. That was an accurate statement at the time

1 you made it in 1999 to Ms. Candace Volker, correct?

2 A. That was my feeling at the time, correct.

3 Q. Last paragraph. Still on Exhibit 105,
4 Bates LITTLE, page 3006.

5 Do you see the last paragraph there?

6 A. Yes.

7 Q. First sentence states "Lastly, as mentioned
8 above, licensing of UC cultivars has always been for
9 the intended purpose of fruit production, and we
10 have routinely followed practices that discourage
11 the use of our germplasm in breeding programs."

12 That was an accurate statement at the time
13 you made it in 1999, correct?

14 A. I think that was accurate in 1999.

15 Q. And next sentence. "These practices
16 include the denial of licenses or test agreements to
17 individuals who seek to use genetic stocks as
18 parents rather than for fruit production."

19 That was an accurate statement at the time
20 you made it in 1999, correct?

21 A. I believe so, yes.

22 MR. CHIVVIS: Next in order.

23 (Exhibit 106 was marked for identification
24 by the court reporter and is attached
25 hereto.)

1 THE WITNESS: I'm sorry. Okay.

2 We conducted research for 30 years and we
3 developed all different kinds of information about
4 strawberry and strawberry experiments that we
5 conducted over those 30 years.

6 BY MR. CHIVVIS:

7 Q. As I understand it, your position is that
8 you left behind a complete set of all the genotypes
9 in the program when you retired November 7th, 2014;
10 is that correct?

11 A. Now I'm confused because you were talking
12 of -- now you're talking about genotypes.

13 Q. I did shift to the genetic material, the
14 actual tissue.

15 A. Right.

16 Q. I just want to take that to the side. Your
17 position is that you provided 100 percent of the
18 genotypes that were then existing in the university
19 strawberry breeding program to the university when
20 you retired on November 7, 2014, correct?

21 A. Yes, there were copies of everything that I
22 had used in the Wolfskill Experimental Orchard
23 nursery or in Kirk Larson's nursery when I left the
24 university.

25 Q. But your position was that you did not need

1 to leave the university with a copy of any of the
2 other types of information we just discussed, the
3 pedigree records, the evaluations of genotypes, et
4 cetera, correct?

5 A. Yes.

6 Q. And that was one of the things that
7 Dr. Knapp was asking you about, whether he could
8 have access to that information. Do you have that
9 understanding?

10 A. He was asking for some of that information.

11 Q. And you refused to provide it to him,
12 correct?

13 A. I think your first statement was correct, I
14 feel I'm under no obligation to provide that to him.

15 Q. You currently have that information that
16 you developed as head of the university's strawberry
17 breeding program, by "that information" I'm
18 including the pedigree information, the specific
19 evaluations of genotypes and the like?

20 A. I have a good bit of that, yes.

21 Q. You have hundreds of megabytes of Lotus
22 Notes spreadsheets and other materials relating to
23 the University of California's strawberry breeding
24 program presently sitting on one of your computers
25 that is in your possession; isn't that true?

1 MR. LIPPETZ: Objection. Misstates facts.
2 Go ahead.

3 THE WITNESS: I don't know if I have a
4 hundred kilobytes. I have some files that I took
5 with me and are on storage devices in my home.

6 BY MR. CHIVVIS:

7 Q. And those files would include complete
8 pedigrees for the 180 genotypes that you submitted
9 to the plant sciences cultivar release committee;
10 isn't that right?

11 A. I believe I have pedigrees for those 180,
12 yes.

13 Q. You have evaluation data for the
14 performance of each of those genotypes in your
15 possession right now; isn't that true?

16 A. I do, yes.

17 Q. And you haven't provided either of those
18 two sets of information to the University of
19 California, correct?

20 A. I have not provided that and I don't
21 believe I need to provide that, as your first
22 question suggested.

23 Q. But you have retained a copy for yourself?

24 A. I have copies of my research files.

25 Q. And do you understand that the university

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

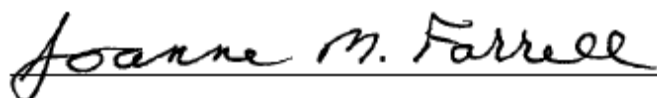
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings review of
15 the transcript { } was {X} was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: December 15, 2016

23 
24

25 Joanne M. Farrell, CSR No. 4838